

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7530 OF 2015

PAPDANDESHWAR SHIKSHAN SANSTHA THROUGH ITS SECRETARY
SHARADRAO MARTANDRAO RADKAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. RB Deshmukh
Mr. SB Yawalkar, AGP for Respondent No.1.
Mr. Suryawanshi Prashant D., Adv. For R/2

**CORAM : S.S.SHINDE &
P.R.BORA,JJ.**

DATE : 25th February, 2016.

PER COURT :

1) Heard. The learned Counsel appearing for the petitioner submits that, the Zilla Parishad has started 5th std. class run by it. It is the submission of the counsel for the petitioner that in view of Rule 6-B of The Right of Child to Free and Compulsory Education Rules, 2010, it was not permissible for the respondent/Zilla Parishad to open the 5th std. division within the radius of 1 km. which would create unhealthy competition and may result into reduction of strength of the students in 5th std. of the school run by the petitioner.

2) Learned Counsel appearing for

respondent/Zilla Parishad, relying upon the decision in the case of Arun Shivaji Chavare Vs. Padmakar Rama Chavare and Ors. reported in 2015 (1) Mah.L.J. 728, and in particular para 8 and 11 thereof, submits that, the issue raised in this petition is no more *res integra* and covered by the said judgment/decision.

3) We have given careful consideration to the submissions of the learned Counsel for the respective parties. As rightly contended by the learned Counsel for the Zilla Parishad, the issue raised in this petition is no longer *res integra*.

4) The Division Bench in the case of Arun Shivaji Chavare (cited supra) in para 8 of the said decision has considered the similar arguments that 6th std. started by the Zilla Parishad within the radius of 1 km from the school of the petitioner in that petition wherein already 6th std. class is in existence.

5) After considering the factual aspects involved in the said matter and the provisions of the said Act, the conclusion is reached by the Court in para 11, which reads thus, -

"11 The submission, referring to the

concept "neighbourhood" defined and reproduced above, cannot be read to overlook the specific provisions of the Act which mandate the Local Authorities to establish School within the area. This "neighbourhood school" concept, can in no way be read to mean that every local body should not comply with the mandate of the Act to establish their school within the prescribed area if, there are already private aided and/or non-aided school, is nothing but wrong interpretation of the provisions of the Act and Rules, specifically when the Act and Rules itself provide "the State Government or the Local authority, as the case may be, shall establish neighbourhood school within the areas or limits having a minimum of 20 children". The Act and the Rules itself provides to relax such condition based upon the existing facts and figures. "

6) In that view of the matter, we are not inclined to entertain this petition and the same stands rejected.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

bdv/